

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGHCF 24

Registrar's Appeal from the Family Justice Courts No 11 of 2021

Between

VTF

... Appellant

And

VTG

... Respondent

JUDGMENT

[Family Law] — [Divorce] — [Interim judgment] — [Rescission]

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VTF

v

VTG

[2021] SGHCF 24

General Division of the High Court (Family Division) — Registrar's Appeal
No 11 of 2021
Choo Han Teck J
16 July 2021

23 July 2021

Judgment reserved.

Choo Han Teck J:

1 The parties married in 2009. They have a daughter born in 2011 and a son in 2013. 2013 was also the year that, according to the Wife, the marriage broke down. She left the matrimonial home in 2019 and filed for divorce the following year, on the grounds of unreasonable behaviour. The papers were personally served on the Husband on 30 June 2020. The Husband did not file his defence by 21 September 2020 in spite of a reminder by the Wife's solicitors to do so. Eventually, Interim Judgment was entered in the Wife's favour on 26 November 2020. The Husband applied by Summons 103 of 2021 to rescind the Interim Judgment, but his application was dismissed by the District Judge Nicole Loh. Against that decision, the Husband now appeals before me.

2 The basis for his appeal is that the Wife did not disclose a material fact, namely, that she is a lesbian who had left the marriage to live with her female

partner. He claims that the DJ would not have granted the Interim Judgment had she known of this fact. He also alleges that the Wife had “disclosed facts which are untrue and thus misrepresented the true state of affairs”. Finally, he claims that the facts relied upon by the Wife were matters that she had accepted and were outside the six months period before the filing of the divorce action.

3 There is no doubt that the marriage had broken down because even before the Wife filed this action for divorce on 25 June 2020, the Husband filed an application in FC/OSG 78 of 2020 on 6 June 2020 for an order that he be granted custody, care and control of the children. Thereafter, parties were directed to attempt a mediation to resolve the divorce suit and the custody application. A mediation took place on 7 September 2020 but failed to resolve either matter, and District Judge Kimberly Scully gave directions for the filing of the Husband’s defence to the divorce action.

4 The Husband was directed to file his defence by 21 September 2020, and his affidavit in support of FC/OSG 78 by 28 September. Nothing was filed by the Husband, and the Wife’s solicitors wrote to the Husband’s solicitors on 22 September reminding them to file the Husband’s defence. It was not filed. On 28 September, not having received the Husband’s affidavit regarding FC/OSG 78, the Wife’s solicitors wrote to the Husband’s solicitors giving them two days’ notice to file the Husband’s defence. It was not filed. Eventually, the Wife set down her divorce suit FCD/2532 of 2020 for hearing on 16 October 2020, but the hearing was adjourned because two days before that, the Husband filed FC/SUM 3097 of 2020 to set aside the order setting down the divorce action for trial, and for an extension of time to file his defence.

5 The applications were thus fixed for hearing one after the other on 26 November 2020. On 26 November, the Husband's application for an extension of time was dismissed. The Wife's action was heard on an uncontested basis and the Interim Judgment was granted. The Husband did not appeal against the order dismissing his application for an extension of time. Instead, he filed FCS/103 of 2021 to set aside the Interim Judgment. That application was dismissed by DJ Nicole Loh on 27 April 2021, against which order the Husband now appeals before me.

6 The Husband's main contention before DJ Loh, as it is before me, was that the Interim Judgment ought to be set aside on the ground of a non-disclosure of a material fact, namely that the Wife is a lesbian. Counsel argued that the Wife did not file an affidavit in reply to the Husband's affidavit, but that was only because counsel for the Wife, Ms Danker had filed notices to refer to all the affidavits that had been filed. The affidavits from both sides related to the marriage, its breakdown, and the children.

7 What is clear is that the alleged non-disclosure that the Wife is a lesbian is a fact that the Husband knew before any application was filed by either party. Both the Husband and Wife's mother filed affidavits attesting to the Wife's relationship with one female partner as one of the reasons for the Husband to be granted joint custody, sole care and control of the children. The Husband was therefore entitled to raise this had he been advised that that would have prevented the grant of an Interim Judgment in the Wife's favour. Instead, his counsel conceded before DJ Loh on 27 April 2021 that "(w)e are not saying that it is a defence but we are saying that if this was disclosed, the Interim Judgment will not have been granted". That, on the face of it made no legal sense, but the

point is that the claim of that particular non-disclosure as a ground for setting aside the Interim Judgment has no merits whatsoever.

8 As an aside, counsel for the Husband stated that the Husband wishes to set aside the Interim Judgment because he believes that once it is set aside, the Wife will return to him. There is no evidence before me as to what gives the Husband such optimism. Apart from the fact that the parties had discussed divorce even before any application was filed, nothing in the voluminous affidavits filed by the Husband evince any warmth between the spouses towards each other after 2013. The Husband's declaration that they had a reasonably happy marriage once was just a preface for him to lay the blame of the breakdown solely on the Wife.

9 As an ancillary argument, counsel for the Husband pleaded her own illness as reasons why the Husband was compelled to apply to set aside the Interim Judgment, claiming that it is not a backdoor appeal against the DJ's decision not to grant her an extension of time — which it is. The Husband's counsel has sought to rely on her illness to seek an extension, but the DJ found no evidence that the Husband's counsel was unable to work due to medical conditions during the relevant time between 7 and 21 September 2020. I am satisfied that in spite of her illness, a brief notice for stay or an appeal against the dismissal of the Husband's application for an extension of time would have sufficed to preserve his contest of the divorce. It is too late now. And it is, from the evidence before me, unlikely to achieve anything but a prolongation of mutual grief. Whatever his reasons for wanting to set aside the Interim Judgment, love, is not even in the queue. The parties ought to proceed to the disposal of the ancillaries without delay.

10 This appeal is dismissed. I will hear the question of costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Grace Chacko (Grace Chacko Law Practice) for the appellant;
Danker Geralyn Germain and Ho Ci Xian Isabel (Veritas Law
Corporation) for the respondent.
